IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.240 of 1996.

Judgement reserved on: 13.8.2007.

Date of decision: 11.9.2007.

Mohinder Singh & anr. ….. **Appellants.**

Vs.

Smt. Amra Devi …. **Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : Mr. Ajay Kumar, Advocate.

For the Respondent : Mr. K.D.Sood, Advocate.

Kuldip Singh, Judge.

The defendants are in appeal against the judgment and decree, dated 16.1.1995, passed by learned Additional District Judge, Kullu, in Civil Appeal No.82 of 1993, confirming the judgment and decree, dated 17.11.1993, passed by learned Senior Sub Judge, Lahaul Spiti District, exercising the powers of Sub Judge 1st Class, Kullu, in Civil Suit No. 67 of 1989. The parties are referred in the same manner, as in the trial Court.

2. The facts, in brief, are that plaintiff filed a suit against defendants for permanent prohibitory injunction regarding land measuring 8-9-0 Bighas, comprised in Khasra Nos.62, 146 min and 155, situate in Phati and Kothi Bajaura, Tehsil and District Kullu. Plaintiff's further case is that suit land is recorded in the ownership of

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Whether the reporters of the local papers may be allowed to see the Judgment?

Ashok Kumar and others and in possession of Atma Ram, as tenant at will on payment of rent. Smt. Mani Devi was his wife and they were issueless. Smt. Mani Devi was the real sister of father of the plaintiff. Atma Ram and his wife Mani Devi adopted the plaintiff as their daughter. Atma Ram died in the year 1966. After his death, tenancy of the suit land was inherited by Smt. Mani Devi, being his widow and she became tenant of the suit land, later on she became owner of the suit land by operation of H.P. Tenancy and Land Reforms Act. After the death of Atma Ram, Smt. Mani Devi was not recorded as tenant in possession in the revenue record and name of Atma Ram continued in the revenue record, as tenant. Mani Devi, who had adopted the plaintiff as her daughter was being maintained and looked after by the plaintiff. The marriage of the plaintiff was also performed by Mani Devi. The plaintiff and her husband started living with Mani Devi and rendered services to her till her life. Her last rites were also performed by them. Mani Devi out of love and affection, executed a will, dated 19.1.1979, in favour of the plaintiff and bequeathed her all movable and immovable properties in favour of the plaintiff. Mani Devi died on 11.3.1984 and after her death on the basis of will, plaintiff inherited her entire estate including the suit land. The mutation No. 379, dated 22.12.1984, was also attested in favour of plaintiff. The plaintiff is owner in possession of the suit land on the basis of will executed by Mani Devi.

3. The defendants started interference and threatened to dispossess the plaintiff from the suit land. Defendant No.1 Dhale Ram got some Rapat No. 160, dated 12.12.1988, recorded in the

revenue record in his favour and now claims himself to have inherited the rights of Smt. Mani Devi and claims his possession on the suit land, though he has no title over the suit land.

4. The defendants contested the suit and have submitted that Atma Ram deceased was not in possession of the suit land as tenant, but it was original defendant No.1 Dhale Ram, who was tenant in possession of the suit land under the owners, but later on after coming into force of H.P. Tenancy and Land Reforms Act, he became absolute owner of the suit land. The mutation No. 1088, dated 24.3.1989, was also attested and sanctioned in his favour. The adoption of plaintiff by Mani Devi was denied. The inheritance of tenancy rights by Mani Devi of the suit land has also been denied. It has been alleged that will dated 19.1.1979, is forged and fictitious document. The name of Atma Ram was recorded as tenant on the suit land due to mistake of revenue officials. In the alternative, it has been submitted that even if Atma Ram is found to be tenant on the suit land in that case also defendant No.1 being his brother is entitled to inherit the tenancy rights, further in alternative, it has been submitted that Mani Devi transferred her tenancy rights in favour of original defendant No. 1 with the consent of previous owner. Some preliminary objections were also taken in the written statement. The defendant No.1 Dhale Ram died on 3.12.1992, and trial court vide order, dated 16.1.1993, brought on record Mohinder Singh son of Dhale Ram. The other son Govind Ram of Dhale Ram was already on record as defendant No.2.

5. The trial court has held that Atma Ram was tenant on the suit land and the same was inherited by Smt. Mani Devi after the death of Atma Ram and she executed a will in favour of the plaintiff. The trial court decreed the suit on 17.11.1993. Defendants filed the appeal, which has been dismissed by the learned Additional District Judge, Kullu, on 16.1.1995, and defendants are now in second appeal.

6. The learned counsel for the parties were heard on the following substantial questions of law:-

(i) What is the effect of admitting into evidence document Ex. PW 6/A the so called will of late Smt. Mani Devi or is the said document proved legally in the case.

(ii) Whether the courts below failed to appreciate the law and facts of the case in their proper and legal perspective and what is the effect of it?

(iii) Whether the present case is directly hit by the ratio of law laid down in Chuhniya Devi vs. Jindu Ram [1991 (1) Sim. L.C. 223] ?

7. Learned counsel for the defendants has submitted that will Ex. PW 6/A has not been proved, marginal witnesses of the will were not examined. The courts below have erred in relying inadmissible evidence in decreeing the suit. Atma Ram was not the tenant on the suit land. The original defendant No.1 Dhale Ram was tenant in possession of the suit land and even if Atma Ram was found to be a tenant on the suit land, in that case also after the death of Atma Ram, original defendant No.1 Dhale Ram being the brother of

Atma Ram would get the tenancy rights and not Mani Devi the widow of Atma Ram. He has submitted that civil court has no jurisdiction. The learned counsel for the plaintiff has supported the impugned judgement and decree.

Substantial question of law No.(i).

8. The will Ex. PW 6/A is scribed by PW 6 Charan Dass, who has specifically stated that Ex. PW 6/A was written and signed by him and is entered in his register at Serial No. 41 on 19.1.1979. The will was executed by Smt. Mani Devi in favour of Smt. Amra Devi. The will was scribed on the instructions of Smt. Mani Devi. The will was read over and explained to Mani Devi and thereafter she put her thumb mark in presence of marginal witnesses after accepting the correctness of the contents of the will. The witnesses Purkhu and Chamaru also put their respective signatures in presence of Mani Devi. Smt. Mani Devi was in sound disposing mind. He has also signed the will. The will Ex. PW 6/A was registered before Sub–Registrar, Kullu on 19.1.1979. PW 7 Pune Ram has stated that Purkhu and Chamaru marginal witnesses of will Ex. PW 6/A had died. He also identified the signatures of these witnesses on will Ex. PW 6/A. In. **G.Vaidehi vs. S. Govindarajan** [(1992) II M.L.J. 393], it has been held that it cannot be contended by any stretch of imagination that in cases where attesting witnesses were dead, a will could not be proved otherwise. The method in such situation will be one as envisaged under Section 69 of the Indian Evidence Act, according to which if no attesting witness can be found then it must be proved that the attestation of one attesting witness atleast is in his handwriting,

and that the signature of the person executing the document is in the handwriting of that person. In the present case, PW 6 has specifically proved that will Ex. PW 6/A was executed and signed by Smt. ManiDevi in his presence and marginal witnesses of the will had also signed in his presence. He has thus fulfilled the requirement of Section 69 of Indian Evidence Act in proving the will Ex. PW 6/A. The two courts below have concurrently held that will Ex. PW 6/A was duly executed by Smt. Mani Devi. This is a finding of fact recorded by the two courts below. Once the will Ex. PW 6/A has been proved to be executed in accordance with law, then it cannot be said that the two courts below have erred in admitting will Ex. PW 6/A in evidence. The learned counsel for the defendants has failed to make out any case for interference with regard to proof of will Ex. PW 6/A. The substantial question of law No.1 is accordingly decided against the defendants and in favour of the plaintiff.

Substantial question of law No. (ii).

9. It is the case of the plaintiff that Atma Ram was the tenant on the land in dispute, after his death in the year 1966 Smt. Mani Devi became the tenant of the suit land. On coming into force of the H.P. Tenancy and Land Reforms act, Smt. Mani Devi automatically became the owner of the suit land, she executed will Ex. PW 6/A in favour of plaintiff Smt. Amra Devi and, therefore, the plaintiff is owner in possession of the suit land. The case of the defendants is that original defendant No.1 Dhale Ram was the tenant on the suit land and he became owner of the suit land after coming into force of H.P. Tenancy and Land Reforms Act. The case of

defendants in alternative is that Smt. Mani Devi would not inherit the tenancy rights of Atma Ram even if Atma Ram was found to be tenant on the suit land. Their case is that in that situation, original defendant No.1 Dhale Ram would inherit the tenancy rights of Atma Ram. This submission of learned counsel for the defendants has no force. As a finding of fact, the two courts below have recorded a finding that Atma Ram was the tenant on the suit land and Punjab Security of Land Tenures Act, 1953 was applicable in the year 1966 in the area where the suit land is situated. On the death of Atma Ram, his tenancy would go to his widow Smt. Mani Devi, under Section 8 of the Punjab Security of Land Tenures Act and not to original defendant No.1 Dhale Ram brother of Atma Ram. On coming into force of H.P. Tenancy and Land Reforms Act, 1972, Smt. Mani Devi would become automatically owner of the suit land and she had every right to execute will Ex. PW 6/A in favour of the plaintiff. It has been held above that Smt. Mani Devi had executed a will Ex. PW 6/A in favour of Amra Devi. In this way plaintiff Smt. Amra Devi is owner in possession of the suit land and has been rightly held so by the two courts below. The substantial question of law No. 2 is decided in favour of the plaintiff and against the defendants.

Substantial question of law No. (iii).

10. In the present case, there is no dispute between landlord and tenant nor plaintiff Smt. Amra Devi ever admitted the defendants as her tenants. The dispute if any was whether Smt. Mani Devi or Dhale Ram original defendant No.1 was tenant on the suit land. In

Chuhniya Devi vs. Jindu Ram [1991 (1) Sim. L.C. 223], Full Bench of this court has held, as follows:-

> "(a) that an order made by the competent authority under the H.P. Land Revenue Act, 1954, is open to challenge before a civil court to the extent that it relates to matters falling within the ambit of section 37 (3) and section 46 of that Act; and
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> (b) the civil Court has no jurisdiction to go into any question connected with the conferment of proprietary rights under section 104 of the H.P. Tenancy and Land Reforms Act, 1972, except in a case where it is found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with."

11. In **Chuhniya Devi's** case (supra), the question before the Full Bench was :-

> " whether the civil court has jurisdiction, in respect of an order,
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> (a) made by the competent authority under the H.P. Land Revenue Act, 1954, and,
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> (b) of conferment of proprietary rights under section 104 of the H.P. Tenancy and Land Reforms Act, 1972,
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> Which has not been assailed under the provisions of these Acts."

12. The present dispute between the parties is not covered by the ratio laid down in **Chuhniya Devi's** case (supra). In the present case, Smt. Amra Devi has filed suit on the basis of title

seeking permanent prohibitory injunction on the basis of her title. The jurisdiction of the court is to be seen on the basis of pleaded case in the plaint. The plaintiff in her plaint nowhere raised the dispute of landlord and tenant between the parties. The civil court has the jurisdiction to try the suit and the two courts below have rightly held that the civil court has the jurisdiction to try the suit. The substantial question of law is accordingly decided in favour of the plaintiff and against the defendants.

13. The result of above discussion the appeal is dismissed with costs.

September 11, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**